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SUPERIOR COURT
JAN 31 2011

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JEANNE RICKS, CLERK

BY: Ivy Rios

5 **IN THE SUPERIOR COURT**

6 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

7 STATE OF ARIZONA,

V1300CR201080049

8 Plaintiff,

**STATE'S REPLY TO DEFENDANT'S
RESPONSE TO MOTION FOR
RECONSIDERATION OF**

9 vs.

**IMPOSITION OF MONETARY SANCTIONS
AGAINST THE STATE IN CONNECTION
WITH DEFENDANT'S MOTION TO
COMPEL**

10 JAMES ARTHUR RAY,

11 Defendant.

(The Honorable Warren Darrow)

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15 Comes now the State of Arizona, through undersigned counsel, and respectfully replies to
16 Defendant's Response to the State's Motion for Reconsideration of Imposition of Monetary
17 Sanctions Against the State in Connection with Defendant's Motion to Compel. Contrary to
18 Defendant's assertion, the State has set forth good cause to reconsider the Court's order for
19 monetary sanctions. This Reply is further supported in the following Memorandum of Points and
20 Authorities.
21

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. In asserting a claim of work product, the State was in good faith arguing the requested
24 material was outside the scope of Rule 15.1, Ariz. R. Crim. P.**

25 Defendant claims the State is asserting "for the first time" that its failure to provide the
26 materials requested by Defendant rested on a good faith belief that the materials were 'not

1 covered by 15.1.” Defendant characterizes this claim as a “new and belated assertion” and a
2 “late-breaking justification for the State’s position.”

3 A review of the record conclusively demonstrates that the State’s position has always
4 been that the materials Defendant sought were attorney work product explicitly exempt from the
5 disclosure requirements of Rule 15.1. The State’s Response to Defendant’s Motion to Compel,
6 filed with this Court on July 23, 2010, contained the State’s position that (1) the December 14
7 meeting was characterized as work product months before criminal charges were even filed in
8 this matter; and (2) the argument that the materials sought were work product and not subject to
9 disclosure under Rule 15.1, Arizona Rules of Criminal Procedure. *See State’s Motion filed July*
10 *23, 2010, para. A.* Notwithstanding that position, the State timely complied with this Court’s
11 order and disclosed the materials and information, including the personal notes of the prosecutor
12 and staff, when ordered to do so. Defendant’s mischaracterization of the State’s position as
13 somehow new and belated is not supported by the record in this matter.
14
15

16 **II. Defendant’s access to the material was covered by Rule 15.1(g), not Rule 15.7.**

17 Defendant further argues that “this dispute was never a disagreement over the scope of
18 Rule 15.1 or the need for a motion under Rule 15.1(g).” The record again clearly contradicts
19 Defendant’s assertions. In the State’s July 23, 2010 Response to Defendant’s Motion to Compel,
20 paragraph D, the State clearly cited Court and counsel to Rule 15.1(g), noting that Defendant had
21 never filed a motion under the appropriate rule. Instead, Defendant immediately sought sanctions
22 against the State. Clearly sanctions are not an appropriate remedy when a legitimate
23 disagreement exists over whether information is protected from disclosure.
24

25 As detailed by the State in its Motion for Reconsideration, there have been numerous
26 disagreements relating to discovery in this matter. For example, the Defendant issued subpoenas

1 to medical providers in violation of A.R.S. § 13-4071(D), and demanded the notes of the State's
2 attorneys taken during meetings with experts, both issues necessitating the filing by the State for
3 protective actions. More recently, the State was forced to file a motion pursuant to Rule 15.2(g),
4 Arizona Rules of Criminal Procedure, to obtain the audio recordings of the 2009 Spiritual
5 Warrior Event. The State had originally requested the recordings from Defendant who refused to
6 provide them. Thereafter, the State had to expend resources to prosecute a motion to compel the
7 disclosure of the recordings. Although the State ultimately prevailed on the motion, it did not
8 seek sanctions against Defendant for refusing to provide the recording. It is exactly these types
9 of disagreements, including a party's claim of work product privilege, that Rules 15.1(g) and
10 15.2(g) are designed to address. Once again, the State submits that good faith disagreements over
11 whether material is subject to disclosure are not the type of disputes that warrant monetary
12 sanctions against either party.

13 **III. Monetary sanctions are not appropriate given the facts of this case.**

14
15 As the State noted in its Motion for Reconsideration, the only criminal case in Arizona
16 where monetary sanctions were found to be merited for a disclosure violation is *State v. Meza*,
17 203 Ariz. 50, 50 P.3d 406 (App. 2003). The misconduct and discovery violations in *Meza* were
18 egregious. As a result of the disclosure violations, Meza's counsel was forced to file "some 30
19 discovery motions," and lengthy delays and a mistrial occurred. *Id.* 50 P.3d at 414-415. Contrary
20 to Defendant's assertions in his Reply, the pleadings in this case reveal the dispute for what it
21 actually was -- a legitimate disagreement over whether certain material/information was subject to
22 disclosure.

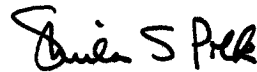
23
24 In seeking authority for its conclusion in *Meza*, the Arizona Court of Appeals cited to two
25 Idaho cases where restitutionary awards of attorney's fees were upheld. However, in both of those
26

1 cases, *State v. Stradley*, 127 Idaho 203, 899 P.2d 416 (1995) and *State v. Thompson*, 119 Idaho 67,
2 803 P.2d 973 (1990), the parties were sanctioned after the Court had ordered disclosure and the
3 parties did not comply. In contrast to the two Idaho cases, once this Court ruled the materials
4 sought by Defendant were subject to disclosure, the State immediately complied.

CONCLUSION

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6 The State respectfully requests this Court to reconsider and reverse its award of sanctions
7 in this instance.

8
9 RESPECTFULLY submitted this 2nd day of February, 2011.

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11
12 

13 By _____

14 SHEILA SULLIVAN POLK
15 YAVAPAI COUNTY ATTORNEY

16
17 **COPIES** of the foregoing emailed this
18 2nd day of February, 2011:

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COPIES of the foregoing delivered this
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